

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

DEVELOPERS SURETY AND  
INDEMNITY COMPANY, a foreign  
corporation,

Plaintiff,

Case No. 6:19-cv-794-MC

v.

OPINION AND ORDER

BETH ANN WHEELER, individually and as  
Trustee of the WHEELER FAMILY TRUST  
dated March 9, 2007; and ROBERT DAVID  
WHEELER, individually and as Trustee of  
the WHEELER FAMILY TRUST, dated  
March 9, 2007,

Defendants.

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MCSHANE, Judge:

Plaintiff moves for summary judgment on its claim of breach of contract against defendants. ECF No. 18. Defendants filed a notice stating they would not file a response. ECF No. 20.

## STANDARDS

Rule 56 governs the motion for summary judgement. “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

## DISCUSSION

Defendants signed an indemnification agreement with Plaintiff. Exhibit 1; ECF No. 18. Plaintiff submitted a declaration outlining \$906,910.41 in losses and expenses. ECF No. 19. Plaintiff submitted evidence indicating “The payments in Exhibit 1 were made based on a reasonable and good faith belief that the amounts were due and owing, after a reasonable investigation.” ECF No. 19. The agreement provides interest shall accrue at 12% per annum. The interest comes to \$216,939.94 as of May 30, 2020. Ex. 2. The total amount outstanding is \$1,012,454.51 as of May 30, 2020, plus \$266.08 per day through the entry of judgment.

Plaintiff informed defendants of the losses on February 9, 2018 and requested indemnity. Compl. ¶¶ 17-19. Defendants breached the agreement by not indemnifying Plaintiff. As Plaintiff produced evidence indicating Defendants breached the agreement, and Defendants failed to offer any evidence presenting a genuine issue of material fact, Plaintiff’s motion for summary judgment on its breach of contract claim is GRANTED.

## CONCLUSION

Plaintiff’s Motion for Summary Judgement, ECF No. 18, is GRANTED.

IT IS SO ORDERED

DATED this 6th day of August, 2020.

/s/ Michael McShane  
Michael McShane  
United States District Judge